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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,005	09/17/2003	Thomas Walker Clarke Fayle	SMAR-018DIV	6607
24353	7590	12/28/2004	EXAMINER	
BOZICEVIC, FIELD & FRANCIS LLP 1900 UNIVERSITY AVE SUITE 200 EAST PALO ALTO, CA 94303			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SN

Office Action Summary	Application No.	Applicant(s)	
	10/666,005	CLARKE FAYLE ET AL.	
	Examiner	Art Unit	
	Alissa L. Hoey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 12 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 12 and 20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Claims 1-10 and 13-19 were cancelled in amendment sent 11/01/04. Claim 11 was amended and claims 20-26 were newly added. An IDS was submitted citing US and foreign references. The continuing data in the specification has been amended to include the patent number of the parent application. Claims 11 and 20-26 have been finally rejected below.

Claim Objections

2. Claim 26 is objected to because of the following informalities: claim 26 depends upon cancelled claim 13. Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 11 and 20-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,654,963 in view of Weiss (DE 40 18 356).

In regard to claim 11, US 6,654,963 teaches a jacket adapted to cover a wearer's chest (see claim 6).

In regard to claim 20, US 6,654,963 teaches a jacket having a hood having a head covering and a face opening the hood comprising an adjustable drawstring arrangement providing for simultaneous circumferential tensioning of the head covering to secure the hood to the wearer's head. The drawstring arrangement also provides temporal tensioning of the face opening. The drawstring arrangement comprises one or more cranial cord segments encircling the head covering and connected to a top portion of the left and right temporal cord segments on each lateral side of the face opening. Manual tensioning of the cranial cord segment acts to secure the hood to the wearer's head and to tension the temporal cord segments. Manual tensioning of either the left or right temporal cord segments acts to tension a cranial cord segment to secure the hood to the wearer's head (see claim 1).

In regard to claim 21, US 6,654,963 teaches the cranial cord segments are generally horizontal and temporal cord segments are generally vertical (see claim 2).

In regard to claim 22, US 6,654,963 teaches at least one of the cord segments is elasticized (see claim 3).

In regard to claim 23, US 6,654,963 teaches the hood comprising a material and the drawstring runs in a channel formed in the material (see claim 4).

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In regard to claim 24, US 6,654,963 teaches the hood further comprises a brim and the brim having an inner cranial cord segment flexibly connected to an outer brim reinforcing member (see claim 5).

However, US 6,654,963 fails to teach the jacket having a collar adapted to cover a wearer's chest having a collar adapted to cover the wearer's neck, wherein a front opening of the jacket is defined by a curved slide fastener. The curved slide fastener is closable so that in a closed position a portion of the slide fastener is disposed vertically along the anterior midline of the jacket and the slide fastener curves laterally and extends upwardly into the collar. The slide fastener in the closed position holds the collar closed over the wearer's neck with the slide fastener offset from the anterior midline of the collar so that a slider at the top of the slide fastener in the closed position is offset from the anterior midline of the collar.

Weiss teaches a jacket (3) adapted to cover a wearer's chest having a collar (7) adapted to cover the wearer's neck, wherein a front opening (12) of the jacket is defined by a curved slide fastener (12). The curved slide fastener (12) is closable so that in a closed position a portion of the slide fastener is disposed vertically along the anterior midline of the jacket and the slide fastener curves laterally and extends upwardly into the collar (figure 1). The slide fastener (12) in the closed position holds the collar (7) closed over the wearer's neck with the slide fastener (12) offset from the anterior midline of the collar (7) so that a slider at the top of the slide fastener (12) in the closed position is offset from the anterior midline of the collar (see figure 2).

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It would have been obvious to have provided the jacket with hood adjustment of US 6,654,963 with the curved slide fastener of Weiss since, the jacket with hood adjustment of US 6,654,963 provided with a curved slide fastener would provide a jacket that zips all the way up the front of the jacket but the slide fastener does not rest over the user's nose and mouth giving the user greater comfort.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Weiss (DE 40 18 356).

In regard to claim 11, Weiss teaches a jacket (3) adapted to cover a wearer's chest having a collar (7) adapted to cover the wearer's neck, wherein a front opening of the jacket is defined by a curved slide fastener (12). The curved slide fastener (12) is closable so that in a closed position a portion of the slide fastener (12) is disposed vertically along the anterior midline of the jacket (3) and the slide fastener (12) curves laterally and extends upwardly into the collar (7). The slide fastener (12) in the closed position holds the collar (7) closed over the wearer's neck with the slide fastener offset from the anterior midline of the collar so that a slider at the top of the slide fastener in the closed position is offset from the anterior midline of the collar (see figure 2).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss in view of Norvell (US 5,386,616).

Weiss provides a jacket with a curved slide fastener as described above in claim

11. However, Weiss fails to teach the slide fastener being coated with a thermoplastic polymer.

Norvell teaches a slide fastener being coated with a thermoplastic polymer (column 4, lines 55-68).

It would have been obvious to have provided the jacket with curved slide fastener of Weiss with the slide fastener being coated with a thermoplastic polymer of Norvell, since the slide fastener of Weiss coated with a thermoplastic polymer would provide a slide fastener that is water resistant.

9. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss in view of Schwartz (US 6,023,790).

Weiss teaches a jacket with a curved slide fastener as described above in claim

11. However, Weiss fails to teach a windowed shoulder pocket on the jacket.

Schwartz teaches a windowed shoulder pocket on a jacket (column 1, lines 39-43 and column 4, lines 42-48).

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It would have been obvious to have provided the jacket with curved slide fastener of Weiss with the windowed shoulder pocket of Schwartz, since the curved slide fastener of Weiss provided with a windowed shoulder pocket would provide a garment that can retain information in a windowed pocket so that it can be viewed by an onlooker but is protected from the elements.

Response to Arguments

10. Applicant's arguments with respect to claims 11, 12 and 20-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

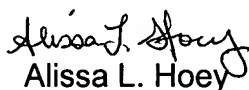
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Alissa L. Hoey
Patent Examiner
Technology Center 3700